



Department of Toxic Substances Control

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To Hazardous Waste Facilities:

IMPORTANT INFORMATION -- SENATE BILL 489 AND HAZARDOUS WASTE OF CONCERN REPORTING AND DISCLOSURE STATEMENT REQUIREMENTS

This letter is to inform you of new reporting requirements for facilities that handle hazardous wastes that are explosive materials, poisonous materials, or poisonous gases.

It is very important that you determine if you handle these hazardous wastes.

Senate Bill 489

In 2002, the California Legislature adopted a number of bills in response to heightened security concerns following the September 11, 2001 attacks. Senate Bill 489 (SB 489-Statutes of 2002, chapter 607, Romero) is intended to increase the security of hazardous wastes of concern that have the potential to be intentionally and effectively used to harm the public in a terrorist or other criminal act. SB 489 implements new requirements for transporters and treatment, storage, and disposal facilities that handle these wastes.

The Department of Toxic Substances Control (DTSC) is adopting emergency regulations to implement this bill. On and after July 11, 2003, the effective date of the emergency regulations, any facility handling these wastes must:

- (1) Report missing hazardous waste of concern and manifest discrepancies by telephone to DTSC within one day and submit a written report within 5 days of the occurrence (starting on July 11, 2003); and
- (2) By January 1, 2004, submit a Disclosure Statement and fingerprints for a criminal background check, unless your corporation is exempted.

The complete Hazardous Waste of Concern Emergency Regulations are on DTSC's website at www.dtsc.ca.gov under Laws, Regulations and Policies.

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at www.dtsc.ca.gov.

What is a Hazardous Waste of Concern?

A hazardous waste of concern is defined as a hazardous waste that is identified on the Uniform Hazardous Waste Manifest with one of the following hazard divisions within the U.S. DOT description, or otherwise known as:

- (1) An **explosive material**, hazard division 1.1, 1.2, or 1.3, as defined under Title 49 Code of Federal Regulations, section 173.50 (as revised October 1, 2002); or
- (2) A **poisonous material**, hazard division 6.1, packing group I or II, as defined under 49 Code of Federal Regulations, section 173.132 (as revised October 1, 2002); or
- (3) A **poisonous gas**, hazard division 2.3, as defined under 49 Code of Federal Regulations, section 173.115 (as revised October 1, 2002).

To determine if a hazardous waste is a hazardous waste of concern, check the information provided on the manifest in Box 11 (U.S. DOT Description), the additional information provided in Box J (Additional Descriptions for Materials Listed Above), and check the label(s) and markings on the container. You may also contact the generator of the waste. Shipping names, hazard divisions and packing groups are found in U.S. Department of Transportation regulations, 49 Code of Federal Regulations. The Hazardous Materials Table is found in Section 172.101. DTSC has prepared an excerpt with the names of the materials that are listed in these hazard divisions. The excerpt will be posted on the DTSC website or available by calling 1-800-728-6942.

Determining Your Hazardous Waste of Concern Status

It is critical that facilities determine whether they handle hazardous wastes of concern in order to comply with the reporting requirements and ensure the security of these hazardous wastes.

*If you **do not** handle hazardous wastes of concern, no further action is needed regarding this notification. Any facility not currently handling these wastes, however, must notify DTSC before starting to handle them in the future.*

*If you **do** handle hazardous wastes of concern, please notify DTSC at the address given below on or before January 1, 2004. (See "Hazardous Waste of Concern Disclosure Statement and Fingerprinting" section below for more information.)*

Hazardous Waste of Concern Reporting

On and after July 11, 2003, facilities are required to report hazardous waste of concern manifest discrepancies (Cal. Code Regs., tit. 22, §§ 66264.72 or 66265.72) or when these wastes are discovered missing during storage (Cal. Code Regs, tit. 22, §§ 66264.78 or 66265.78). "Missing hazardous waste of concern" is defined as lost, stolen, or disappeared (Cal. Code Regs, tit. 22, § 66261.111(b)).

Reports are required where the missing waste represents either a reportable quantity or a reportable difference in type.

- (1) **Reportable quantities** of missing hazardous waste of concern are:
 - (A) for bulk waste, variations greater than 3 percent in weight or volume;
and
 - (B) for containerized waste, any variation in piece count, such as a discrepancy of one drum in a truckload.
- (2) **Reportable differences in type** of a hazardous waste of concern are obvious differences that can be discovered by observation of the physical properties of the waste, inspection, or waste analysis (e.g., waste solvent substituted for used oil, or containing hazardous constituents not reported on the manifest that would change the shipping name or waste code).

If an emergency exists or you believe that a crime occurred, such as a theft, please contact law enforcement directly by calling 911.

You must contact DTSC by telephone within 24 hours of discovering the problem, unless you have resolved it within that time. Facilities must telephone the Complaint Hotline at 1-800-69-TOXIC (1-800-698-6942) and leave the following information:

- (1) Generator name and identification number;
- (2) Transporter(s) name(s), identification number(s), and, if available, transporter(s) registration number(s);
- (3) Destination facility name and identification number;
- (4) Manifest number;
- (5) Waste information (lines 11, 12, 13, and 14 of the manifest), including proper shipping name, hazard class or division, identification number, packing group, number of containers, container type (as listed in Table I of the Appendix to Chapter 12, Article 7), quantity or volume of waste at issue, weight or volume units, and waste codes; and

- (6) *When reporting manifest discrepancies:* Potential locations or transportation routes where the hazardous waste of concern may have become missing (e.g., on highway or roads, rail line, transfer station, truck stop, etc.); or
When reporting waste that became missing while in storage: Potential locations or transportation routes where the hazardous waste of concern may have become missing (e.g., areas at the facility the waste was handled or stored or during transportation to the facility on highway or roads, by rail line, transfer station, truck stop, etc.).

A written report with the same information, including resolution of the discrepancy or missing waste, must be submitted within 5 days of the occurrence to one of the following addresses:

	Southern California	Northern California
Address	Complaint Coordinator Dept. of Toxic Substances Control Statewide Compliance Division Glendale Branch 1011 North Grandview Avenue Glendale, California 91201-2205	Complaint Coordinator Dept. of Toxic Substances Control Statewide Compliance Division Northern California Branch 8800 Cal Center Drive Sacramento, California 95826-3200
Counties	Los Angeles, Ventura, Santa Barbara, San Bernardino, Orange, Riverside, San Diego, or Imperial.	Any other California County, or out of state.

Mail the report to the address above based on the county your facility is located within. These immediate notification requirements replace the previous notifications required by the Manifest Discrepancy Regulations adopted in April 2002. The scope of the reporting was expanded by SB 489 to include losses discovered during transportation and during storage.

Hazardous Waste of Concern Disclosure Statement and Fingerprinting

If you operate a facility that currently handles or intends to handle hazardous wastes of concern, you are required to provide DTSC with information regarding the compliance history of your company. This includes completion of a Disclosure Statement and submission of fingerprints for any person who owns more than five (5) percent of the company (Health & Saf. Code § 25112.5(a)).

Copies of the Disclosure Statement guidance and document will soon be posted on DTSC's website at www.dtsc.ca.gov/ under Managing Hazardous Waste, Hazardous

Waste Facilities or can be obtained by contacting a facility's Permits and Corrective Action Division project manager.

Facilities that handle hazardous wastes of concern must submit a completed Disclosure Statement to DTSC by January 1, 2004, at the following address:

Department of Toxic Substances Control
Hazardous Waste Management Program
Permit Program Development Section
Attention: David Wright
P. O. Box 806
Sacramento, California 95812-0806

The passage of SB 489 authorizes DTSC to receive criminal history summaries from the Department of Justice (DOJ) for its Disclosure Statement requirement pursuant to Health and Safety Code section 25112.5 for the purpose of background checks and requires a Disclosure Statement for individuals that manage hazardous wastes of concern as specified in Health and Safety Code Article 6.6.

In order to complete the fingerprint/background check requirement, any partner, officer, director or individual, including any sole proprietor, identified within the Disclosure Statement as holding more than a 5 percent interest in the equity or debt liability of the business concern, must submit properly completed fingerprint cards or "live scan". This can be accomplished by the applicant(s) visiting any of the Applicant Live Scan satellite locations where fingerprint images and related data are electronically transmitted to DOJ. Applicant Live Scan information and fingerprint locations (including hours of operation and costs related to live scan fingerprinting) can be obtained on the DOJ website at www.caag.state.ca.us/fingerprints/index.htm.

Applicants are to provide the Applicant Live Scan operator with ORI Code Number, which identifies DTSC as the agency to which DOJ will provide responses related to fingerprints and criminal background summaries. (This number will be provided to you with the guidance document.) Once the fingerprints and background summaries are received by DOJ, they are electronically processed by the DOJ Networked AFIS Transaction Management system. Live scan submissions, which have no data or quality errors and do not result in possible criminal history matches, are processed automatically with an electronic response to a secured computer within DTSC. DOJ will also coordinate other electronic processes resulting from the automated submissions of fingerprints, including forwarding the fingerprints to the FBI.

Disclosure Statements for Facilities That Do Not Handle Hazardous Waste of Concern

Even if a facility does not handle waste of concern, it is required to submit a completed Disclosure Statement when applying for a permit modification, permit renewal or for a new permit. The Disclosure Statement guidance and document will be provided to you during the pre-application meeting with your facility's Permitting and Corrective Action Division regional project manager. Disclosure Statements are also required for any facility receiving post-closure authorization.

Corporate Exemptions From Disclosure Statement and Fingerprint Requirements

Some corporations are exempt from submitting the Disclosure Statement and/or from the fingerprint/criminal background summary requirements. Public corporations that are listed by the Securities and Exchange Commission (SEC) or are wholly owned subsidiaries of a SEC listed company are exempt from the requirement to submit fingerprints. To also be exempt from the Disclosure Statement requirements, a corporation must have operated a hazardous waste facility or interim status facility in California since January 1, 1984.

Corporations claiming these exemptions must still report all missing hazardous wastes of concern and must meet all of the requirements of Health and Safety Code section 25112.5(b) and (c). The following corporations are exempt from one or both of these requirements:

- A corporation, the stock of which is listed on a national securities exchange and registered under the Securities Exchange Act of 1934 (15 U.S.C. sec. 78a et seq.) or a subsidiary of such a corporation, is not subject to the **owner fingerprint requirement**.
- Corporations with stock listed on a national securities exchange or on the National Market System of the NASDAQ Stock Market and registered under the Securities Exchange Act of 1934 (15 U.S.C. Sec. 78a et seq.) or a subsidiary of that corporation, in lieu of submitting a Disclosure Statement, may submit to DTSC copies of all periodic reports, including, but not limited to, those reports required by Section 78m of Title 15 of the United States Code and Part 229 (commencing with Section 229.10) of Chapter II of Title 17 of the Code of Federal Regulations that the corporation or subsidiary has filed with the Securities and Exchange Commission the three years immediately preceding the submittal. **This exemption only applies if the corporation or subsidiary has held a hazardous waste facility permit or operated a hazardous waste**

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facility under interim status in California pursuant to Section 25200 or 25200.5 as of January 1, 1984 and continuously since then.

If a company believes that it qualifies for these exemptions, it needs to submit a letter to DTSC at the above address providing an explanation of its exemption eligibility.

If you having any questions concerning DTSC's new requirement for the submittal of Disclosure Statements or the procedures for ascertaining the fingerprint/background check requirement, please contact David Wright at (916) 322-0584 or dwright1@dtsc.ca.gov.

Sincerely,

(original signed by)

Jan Radimsky, P.E., Chief
Permitting Program Development Branch
Hazardous Waste Management Program